

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MILDRED HEDRICK
Claimant

VS.

U.S.D. NO. 259
Respondent
Self-Insured

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Docket No. 135,371

ORDER

Respondent appeals from a preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated September 22, 1995, wherein Judge Barnes granted claimant payment from respondent in a post-award preliminary hearing for a car purchased by claimant and alleged to be post-award medical care. Appeals Board Member Pro Tem Jeff K. Cooper has been appointed to serve in the place of Appeals Board Member Kenton Wirth who has disqualified himself from participating in this case.

ISSUES

- (1) Whether the Administrative Law Judge erred in granting claimant post-award medical treatment;
- (2) Whether the Administrative Law Judge erred in requiring respondent pay for a vehicle for claimant as a form of post-award medical treatment; and
- (3) The payment of reasonable attorney fees to claimant's attorney for this post-award motion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

This matter is before the Appeals Board on an appeal from a preliminary hearing which occurred as a result of the claimant filing an E-3 on August 9, 1995, post-award. As a result of this preliminary hearing, claimant was awarded costs for a used car purchased by claimant which, claimant alleges was a result of instructions from Dr. Poole, the treating physician and which qualifies this car as a form of medical treatment. The Administrative Law Judge agreed, requiring respondent to pay claimant for the cost of the vehicle.

K.S.A. 44-534a and K.S.A. 44-551 restrict the right to appeal from preliminary hearings in workers compensation matters. Under K.S.A. 44-534a an appeal is proper with regard to the disputed issues of (a) whether the employee suffered an accidental injury,

(b) whether the injury arose out of and in the course of the employee's employment, (c) whether notice is given or claim timely made, or (d) whether certain defenses apply. These issues are considered jurisdictional and subject to review by the Board. Under K.S.A. 44-551 an appeal may also be taken from a preliminary hearing if it is alleged that the Administrative Law Judge exceeded his or her jurisdiction in granting or denying the benefits requested at the preliminary hearing.

K.S.A. 44-534a grants the administrative law judge the power to make decisions regarding the furnishing of medical treatment and the payment of temporary total disability compensation. As this request for the automobile stemmed from a medical letter of Dr. Poole, the treating physician, and was requested by claimant as a form of medical treatment, the Appeals Board finds the Administrative Law Judge was within her jurisdiction to award same. The Appeals Board finds that this matter is not properly before the Appeals Board as the order of the Administrative Law Judge, in awarding ongoing medical treatment to claimant, is within the Administrative Law Judge's jurisdiction and, thus, not appealable to the Appeals Board from a preliminary hearing.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby dismissed, and the post-award preliminary Order of Administrative Law Judge Nelsonna Potts Barnes, dated September 22, 1995, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I respectfully dissent from the opinion of the majority. In this instance, the Administrative Law Judge found that providing of an automobile constituted medical treatment in this state. The basis for this award by the Administrative Law Judge stems from the letter from Dr. Poole which was created at the request of the claimant. In that letter, Dr. Poole stated that claimant needed a vehicle that she could climb into safely, "which can be effected either with a fairly large vehicle, or a tilt-able steering wheel."

Under K.S.A. 44-510(a) it is the responsibility of the employer to "provide such medical treatment as may be reasonably necessary to relieve and cure the employee from the effects of the injury." No Kansas case has been found directly on point with this issue. Cases in other jurisdictions have found that specially equipped automobiles, even when used by paraplegics, did not constitute a medical apparatus or device. See *Nallen v. Motion Picture Studio Mechanics Union, Local #52*, 49 A.D. 2d 365, 375 N.Y.S. 2d 164 1975, rev. on other grounds 40 N.Y. 2d 1042, 391 N.Y.S. 2d 853, 360 Northeastern 2d 353 1976; *McDonald v. Brunswick Electric Membership Corp*, 77 N.C. App. 753 336 S.E. 2d 407 1985.

A review of Larson's Workmens Compensation Act, section 61.13(a) discusses cases where vehicles have constituted medical treatment but in each of these cases the claimant was a paraplegic and the vehicle replaced a necessary bodily function of the claimant.

There is nothing in this case which indicates the providing of this vehicle to the claimant will replace a necessary bodily function lost by claimant as a result of this injury.

The Appeals Board, in declining to consider this matter on appeal from a preliminary hearing, misses the key issue being considered by the Administrative Law Judge. This is not a question of whether the Administrative Law Judge has the right to provide medical treatment under the preliminary hearing statute. This is, instead, a fundamental question of what constitutes medical treatment in the state of Kansas. In awarding an automobile under the definition of medical treatment, the Administrative Law Judge has exceeded her jurisdiction by defining medical treatment beyond that provided by either statutory or case law in Kansas. This does exceed the Administrative Law Judge's jurisdiction under K.S.A. 44-534a, thus allowing the Appeals Board to consider this issue under K.S.A. 44-551. The request by claimant that this car be paid for as a form of medical treatment should be denied and the Administrative Law Judge, in ruling that this vehicle constitutes medical treatment, should be reversed.

BOARD MEMBER

c: Chris A. Clements, Wichita, Kansas
Robert G. Martin, Wichita, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director